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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,489	09/22/2003	Jack Massoni	1005-004B	1905

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EXAMINER

ELHILO, EISA B

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 03/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/667,489	Applicant(s) MASSONI, JACK	
	Examiner Eisa B Elhilo	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11 and 12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11 and 12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

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Claims 1-9 and 11-12 are pending in this application.

### **DETAILED ACTION**

#### ***Claim Objections***

1. Claim 11 objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 11, is improper dependent of the missing claim 10.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-2, 4-6, 8-9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Casperson et al. (US' 6,156,076).

Casperson (US' 076) teaches a hair dyeing composition comprising from 0.3 to 10% of alkalizing agents such as monoethanolamine and aminomethylpropanol (see col. 7, lines 8-14), from 0.15 to 10% of protective agents (hydrophobic agents) such as laurylpolyglucoside (see col. 7, lines 32-41), from 1 to 25% of nonionic surfactants (see col. 7, lines 60 to 63), from 0.0001 to about 10% of dye components such as p-phenylenediamines (see col. 4, lines 53-67 and col. 6, lines 63-64), aminophenol and resorcinol components (see col. 5, lines 6 and 31) and from 50 to 70% water ( see col. 4, lines 30-33). The dyeing composition also comprises hydrophobic agents of fatty alcohols such as Cetyl alcohol (see col. 9, Examples 1 and 3). Casperson further teaches

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a method for dyeing hair comprising applying to the hair the dyeing composition as described above (see col. 14, claim 30).

Although Casperson et al discloses a hair dyeing composition that comprises alkalizing agents, multicomponent protective agents, nonionic surfactants, dyes and water, the reference does not teach the ingredients of the dyeing composition in the percentage amounts as required by the claimed invention to constitute anticipation.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make such a composition by optimizing the amounts of the dyeing ingredients in the composition because such a dyeing composition comprising alkalizing agents, multicomponent protective agents, nonionic surfactants, dyes and water falls within the scope of those taught by Casperson et al wherein the percentage amounts of the dyeing ingredients are overlapped with those claimed and therefore is an obvious formulation.

4      Claims 3, 7 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Casperson et al. (US' 6,156,076) in view of Nakama et al. (US 5,785,961).

The disclosure of Casperson et al as summarized above indicated that Casperson discloses a hair dyeing composition that comprises alkalizing agents, multicomponent protective agents of fatty alcohols, nonionic surfactants, dyes and water. However, the reference does not teach or suggest a hair dyeing composition that comprises phosphated fatty alcohols as required by the applicant in the instant claims.

The secondary reference of Nakama et al. (US 5,785,961) teaches in analogous art of hair dyeing formulations, a composition comprising alkalizing agents, dyes, surface-active agents and water (see col. 2, lines 44-51). It is further, taught by Nakama et al that the surface active agents

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are phosphate ester of fatty alcohols such as sodium POE oleyl ether phosphate and POE stearyl ether phosphate (see col. 6, lines 46-48), and also taught by Nakama that the dyeing composition that comprise anionic surface active agents gives the hair a color tone, and at the same time makes washing and conditioning possible (see col. 1, lines 40-42).

Therefore, in view of the teaching of the secondary reference of Nakama et al, one having ordinary skill in the art would have been motivated to modify the primary reference of Casperson et al by adding the phosphated fatty alcohol as a surface active agent in the dyeing composition to promote the color tone, washing and conditioning of hair. Such modification would be obvious because one would expect that the use of phosphated fatty alcohol as taught by the secondary reference of Nakama et al, would be useful and applicable to the analogous dyeing composition taught by the primary reference of Casperson.

### *Conclusion*

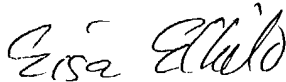
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo  
February 24, 2004



BRIAN P. MUEK

PRIMARY EXAMINER

TECH CENTER 1700